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Supreme Court of the United States

October Term, 1978

No. 78-1367

GEORGIENA N. COOK,
Petitioner,

vs.

MUSKINGUM WATERSHED CONSERVANCY DISTRICT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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STATEMENT OF THE CASE

Respondent is a political subdivision of the State of Ohio, organized as a Conservancy District pursuant to Ohio statutes. Respondent is the fee simple owner of a parcel of land in Carroll County, Ohio, that it leased to Petitioner on August 30, 1962.

Respondent was under no requirement to lease this parcel of land to Petitioner.

The lease provided that the lease was for a term of one year beginning September 1, 1962, except that the lessee may renew the lease from year to year until a date fourteen years from the beginning of the lease. In addition, the lease states:

> ". . . and the lessee shall have the first preferential right and option to enter into a new lease agreement at the expiration of the 14-year period, which new

lease shall be similar in nature and form, *but with such revision of rentals, terms and other conditions as the Board may deem necessary . . .*" (emphasis added)

The rental for the first seven years of the lease was $110 per year, from September 1, 1962 to August 31, 1969. In accordance with the lease, the Respondent, beginning in the eighth year of the lease, gradually increased the annual rental each year during the remaining seven years of the lease from $110 to $131 for the fourteenth year of the lease.

The lease expired on September 1, 1976. Before the expiration of the lease, the Respondent, in compliance with the provision of the lease relative to the first preferential right and option, tendered to Petitioner a proposed new lease agreement for an additional fourteen years with an annual rental of $294. Petitioner refused to execute a new lease on such terms and filed suit against the Respondent.

Petitioner's suit in the United States District Court for the Northern District of Ohio, Eastern Division filed on September 24, 1976, alleged that the District Court had jurisdiction under 28 U.S.C. Sec. 1343, and that a claim under 42 U.S.C. Sec. 1983 existed because the Respondent's act of increasing the rent as a condition to renewal of an expired lease contract with Respondent was an unconstitutional exercise of authority by Respondent.

The Respondent filed on October 15, 1976, a "Motion to Dismiss Complaint" pursuant to Civil Rule 12 (b) (1), (2) and (6), upon the grounds of (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, and (3) failure to state a claim upon which relief can be granted. Essentially the Respondent argued that the Complaint did not allege facts sufficient to give the

District Court jurisdiction over the subject matter of the Complaint or over the person of the Respondent, and that the Complaint did not state a claim pursuant to the federal statute under which Petitioner brought her action.

The District Court granted, on November 30, 1976, the Respondent's Motion to Dismiss. The District Court held that the Court lacked jurisdiction of the Complaint because the Respondent, as a political subdivision of the State of Ohio, was not a "person" within the meaning of 42 U.S.C. Sec. 1983. In addition, the District Court held that Petitioner's claim did not constitute a claim for relief recognizable under 42 U.S.C. Sec. 1983.

Petitioner appealed this decision to the United States Court of Appeals for the Sixth Circuit. During the pendency of the appeal Petitioner accepted the terms of the new lease by executing said lease.

The Court of Appeals unanimously affirmed the District Court's judgment and stated that "we find this appeal to be completely frivolous."

Petitioner's petition to the Court of Appeals for rehearing was denied.

Petitioner filed with this Court a Petition for Writ of Certiorari in May of 1978 in Case No. 77-1599. This Court, on October 2, 1978, vacated the judgment of the Court of Appeals and remanded the case to that court "for further consideration in light of *Monell v. Department of Social Services of New York City*, 436 U.S. 658 (1978)."

The Sixth Circuit Court of Appeals on November 27, 1978, with the remanded case again affirmed the judgment of the District Court.

Petitioner's petition to the Court of Appeals for rehearing was denied on January 2, 1979.

REASONS FOR DENYING THE WRIT OF CERTIORARI

1. The District Court and the Court of Appeals Were Correct in Dismissing the Complaint for Lack of Subject Matter Jurisdiction and for Failure to State a Federal Claim for Relief Because the Complaint Alleged No Claim Under 42 U.S.C. Sec. 1983.

The opinion of the District Court clearly states that the Respondent's Motion to Dismiss was granted for two separate and independent reasons—(1) Respondent was not a "person" within the meaning of 42 U.S.C. Section 1983, and (2) "no constitutionally protected right or interest is involved in this lawsuit", and there was therefore no cognizable claim for relief under 42 U.S.C. Section 1983. As the Court of Appeals stated, in its Order on remand, while *Monell* may cast some doubt upon the District Court's holding relative to whether Respondent was a "person" in terms of 42 U.S.C. Section 1983, *Monell* has no effect on whether or not the Complaint asserted a cognizable claim for relief under that statute. The Court of Appeals repeated its prior opinion that Petitioner's "assertions in that regard are completely frivolous."

Petitioner's contention that the action of the Respondent was equivalent to a taking of property without just compensation is without support. The present case does not present a situation in which a governmental body is attempting to exercise its sovereign powers by appropriating land owned by a private party. The Respondent was not required to lease land to the Petitioner or anyone else in 1962 nor was it required to offer a lease containing a provision for a first option for a renewal after

fourteen years. The original lease obligated the Respondent to lease the land to Petitioner for fourteen years and to afford her the "first preferential right and option" to enter into a new lease after the first fourteen years with the rentals, terms, and other conditions of the new lease as the Respondent "deemed necessary" (quoting lease). The Respondent fulfilled its contractual obligation by presenting to her a proposed new lease, which she initially rejected (although she subsequently did execute the new proposed lease). Whatever "rights" Petitioner may have once possessed were common law contractual "rights", and those "rights" were terminated when the lease term expired on September 1, 1976, except for the provision that Petitioner had the first option to enter into a new lease on terms that the Respondent deemed necessary.

Petitioner also contends that the Respondent deprived her of a "right, privilege, or immunity secured by the Constitution and laws." 42 U.S.C. Sec. 1983. Petitioner alleges that the due process clause of the Fourteenth Amendment to the United States Constitution was violated. To be successful on a Sec. 1983 claim based on a deprivation of due process, the Petitioner must show that the Respondent deprived her of "life, liberty, or property without due process of law." Petitioner focuses on an alleged denial of *property* without due process of law, and states that she had a property right under Ohio law that was denied by Respondent.

Petitioner cites no Ohio law affording any party the right to lease land on terms other than those to which the lessor agrees.

There must be a property right under state law before deprivation of same could constitute a violation of Sec. 1983. *Paul v. Davis*, 424 U.S. 693 (1976).

Ohio law does not afford to Petitioner any legal guarantee that she may renew a lease with another party, whether private or government, on rental terms other than those to which the lessor agrees. Unlike the party in *Paul v. Davis, supra*, who did have a state claim for damages of reputation, Petitioner would not even have a state claim inasmuch as there is no Ohio law affording one party to a contract the right to circumvent the contract merely because she disagrees with its terms, especially considering that petitioner previously agreed by contract that any renewal would be conditional upon the right of the lessor to revise the rental terms of the new lease.

Petitioner has cited no case that recognizes a constitutional right similar to the one she claims. Her theory of jurisdiction, if accepted by this Court, would necessarily mean that any person having a contract (lease or otherwise) with a state governmental entity, which contract has expired by its own terms, and who is not satisfied with the terms of a proposed new contract will have access to the federal courts to litigate what the terms of a new contract shall be.

2. The Court of Appeals Was Correct in Affirming the Dismissal of the Complaint Because Petitioner During the Pendency of the Appeal Accepted the Terms of the New Lease.

From the Order of the District Court dismissing the Complaint, Petitioner filed a Notice of Appeal on December 3, 1976. On December 15, 1976, Petitioner did execute the renewal lease containing the provision of $294 annual rental, and Petitioner paid by check the first year's rental of $294. Petitioner thereby contractually agreed to the rent that she had previously sought to have declared unconstitutional by the District Court. Therefore, the appeal is moot because no controversy now exists between the parties.

CONCLUSION

Both the District Court and the Court of Appeals for the Sixth Circuit correctly determined that Petitioner's Complaint should be dismissed. Therefore, this Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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